

IRISH LAND ACT COMMISSION

1880.

REPORT

BY

THE O'CONOR DON.

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PREFACE.

THE creation of occupying ownership in Ireland, through the instrumentality of State aid, is again occupying so much public attention, that I have been urged by some of my friends to republish, in a separate form, the Report which I submitted as a member of the Bessborough Commission. Most of the predictions contained in that Report are every day receiving such remarkable confirmation, that I may be pardoned for desiring to extricate it from the early tomb of a Parliamentary Blue-book. The present circumstances of the country, of course, somewhat differ from those which existed at the time that Report was written; and although I am not blind to the fact that the difficulties in the way of my proposal have considerably increased, yet I believe the scheme which I recommended more than a year ago, may still afford some useful hints for the only settlement of the Irish Land Question which has any element of permanence about it.

O'CONOR DON.

March, 1882.

SEPARATE REPORT BY THE O'CONOR DON.

THE inquiry which we have been conducting during the last few months has been by the very terms of our Commission divided into two branches: the one relating to the working and operation of the existing land laws of Ireland; the other dealing with alterations and amendments in these laws. Upon the first branch of the inquiry I quite concur with my colleagues in the foregoing Report; I also agree in several of the recommendations relating to the second branch, although I differ on what may be considered, and what I myself consider, very essential points in regard to the remedy proposed for existing evils. * * *

The first point to which I must allude, and which has not received, I think, the prominence it deserves is this: that not only is the ordinary occupying tenure of land in Ireland insecure, but the ownership of land is confined to a few. So far as the mere occupation of land is concerned I do not know that the position of affairs is worse in Ireland than in other countries; on the contrary, I believe it would be found that, regarding the occupier as a mere hirer of the land, his legal rights are superior, and his security greater, than in most other countries in Europe, whilst his practical rights—those recognised by the majority of landlords, and enjoyed by the majority of tenants—are in excess of the rights or the security ordinarily given elsewhere.

Ireland is peculiarly a land of numerous occupiers and a very restricted class of owners—hundreds of thousands of tenants and a mere handful of landlords; and this in a country where not only are the tenants very numerous as compared with the owners, but numerous as compared with the entire population.

It is estimated that there are about 500,000 tenants occupying land in Ireland—that is to say, 500,000 families—and setting down an average of five individuals for each family, this would give us at once 2,500,000 persons, or about half the population, directly connected with the land, as occupiers of the soil; and if to these we add all the outside relatives of these families and all persons dependent on them, such as the small country traders and dealers, it will at once appear that the strength of this class is irresistible; that their views and opinions must be the views and opinions of the country; and that no matter what the law may lay down, no matter what rights it may give against them, such rights, if not acquiesced in by them, can never be universally enforced without giving rise to a revolution.

We must also bear in mind that these people are now educated, that they practically possess the highest political power, that they are all able to take an intelligent view of their own position, and that the view they are likely to take will not be one disadvantageous to themselves. If Ireland were not united with England, if she were left to herself, there can be little doubt, I think, that with or without compensation, the existing rights connected with the ownership of land would be swept away or greatly restricted, whilst, on the other hand, if we had some hundreds of thousands of owners replacing the existing 10,000 landlords, instead of restriction on transactions relating to land, we should have a demand for the most perfect freedom of contract. From this it seems to me to follow that if we are to get to the bottom of the real difficulty of Irish land tenure, and if we are to settle it on any real permanent basis, it is not merely the relations between landlord and tenant that have to be considered and adjusted, but whether these relations should be continued to the same extent as they now exist, and therefore, I fear that any Act based merely or mainly on proposals to modify the conditions under which the occupier is brought into relation with the owner, will be only like the Act of 1870, a mere temporary expedient, fit for a transition period, but containing within itself the

seeds of failure as a permanent settlement. Another slice, and a very large slice of what is now recognised as the legal property of the owner, will be taken away without satisfying the occupiers, and above all without establishing any just principles on which this transference of property should take place. Under these circumstances, I am obliged to dissent from the recommendation which places compulsory fixity of tenure in the first rank, and merely deals with occupying ownership as a slow and very secondary alternative. The establishment of a peasant proprietary or occupying ownership, first, with facilities for voluntary arrangements for fixity of tenure in certain cases as a subsidiary measure, and compulsory fixity of tenure and adjustment of rents as a last resort, would be my remedy. Before stating how I would propose to carry this out, I must deal with what I consider the serious objections to the scheme from which I differ, and in doing so I desire to deal with it generally, as submitted to us by the witnesses, and not merely as recommended in the Report—

1st. I believe it would be extremely difficult, if not impossible, justly to carry it out.

2nd. Even, if established, it would not give a satisfactory tenure.

3rd. If made the general rule of the country it would be but the starting point for a new and most formidable agitation.

And lastly. If extended to future lettings it could not be maintained or upheld without the most disastrous legal interference with, and legal restrictions on, matters of everyday life which I could never approve of.

Obviously fixity of tenure would be an absurdity without some control over rent-raising. To give the occupier the right to fixity of tenure and, at the same time, to allow the owner to charge what rent he pleased, would be to do nothing effective, as, in the words of the Report, it would be nugatory and absurd to confer on the tenant a proprietary right of which the value depended on the will of the landlord. Indeed control over rent is what has been most looked for by the witnesses

who came before us, and rent-raising, rather than eviction, has been the great grievance complained of. Although we might have "fair rents" without "fixity of tenure," we cannot establish "fixity of tenure" without "fair rents;" and it is in arriving at fair rents that I think the greatest difficulty will be found.

Fixity of tenure at fair rents has, no doubt, received the sanction of the majority of the witnesses who appeared before us, and the principle involved in it has been supported by many landlords as well as tenants. In short, a sort of general consensus of public opinion in its favour has been claimed for it by its adherents. Unanimity of opinion which is based on such general terms as "fair" and "reasonable" may not, however, be so very real when we come to test the meaning placed on these words by the different persons using them. Can it, for instance, be truly said that there is any real unanimity of opinion between the landlord who upholds fair rents and the advocate of the tenants' cause who holds the same ostensible doctrine, but who thinks that the fair rent of land, which a hundred years ago was reclaimable waste land, should be calculated on the assumption that it was still in an unreclaimed condition, unless the landlord could prove that all the improvements that had been made in it had been executed at his expense or that of his predecessors? A large proportion of the witnesses on the tenants' side have told us that they consider Griffith's Valuation, as it is called, quite a sufficiently high standard for a "fair" rent, and numbers of them told us that they considered it far too high, although that valuation was made on a standard of prices exceptionally low, and under circumstances in which it was the interest of everybody, both landlords as well as tenants, to keep it as low as possible. Again, rents that have not been increased for twenty, thirty, or even forty years, have been protested against as rack rents, and even where large sums have been paid for the tenants' interest at those rents, they have still been represented as far above the standard of fairness. Is it likely that this is the meaning placed on the same term

“fair” by the landlords who have advocated it, and is it not pretty certain that “fair rents,” if established, must disappoint one side or the other.

It is, of course, proposed by every advocate of the system that arbitrators, or a court of some sort, should be established for settling all disputes as to rent, and it is expected and hoped that the cases which would be brought forward for settlement would be few and far between; that disputes as to rent would only gradually arise; that, so arising, the decision of the arbitrators or courts would become precedents, and the principles of these decisions becoming generally known, some cheap and summary way of settling disputes as to rent would be resorted to in all ordinary cases. Were we dealing with the land question in ordinary and quiet times, when the prices of farming produce were up to their ordinary standard, and farming profits were in their normal condition, there might be some foundation for these expectations, although, even then, I doubt whether the passing of such a law would not lead to a general commotion, but in the present state of affairs the making of an offer to all the tenants of Ireland to have their rents fixed by arbitration must, I apprehend, lead to a general demand for this. If this arose, where could the competent and trustworthy valuers or umpires be found? To estimate correctly even the fair commercial letting value of land is not an easy task. The valuator, or, in case of arbitration, the umpire, to be competent should be a local man, having local knowledge of the particular land he is asked to value, of its past history, and its capacity for production as tested by experience; and if he be a local man he can scarcely be free from local prejudices, local feelings, and, above all, from local suspicions. With this local knowledge he must possess thorough independence of all classes, and must be placed above the range of either bribery or intimidation; and one of the first and great difficulties will be to find a sufficient number of men possessing these qualifications. * * *

The ordinary difficulties of estimating the value of land are also enhanced by the proposal, sanctioned by

most of the witnesses, that the improvements, effected at any time by landlord or tenant, and any payment made for the tenants' interest should be taken into consideration. Any one of these questions in itself may lead to no end of trouble. Take, for instance, the question of improvements. We know that this question has given rise to an immense amount of dispute and litigation even under the present Land Act; but this can scarcely give us any idea of the disputes that may, and I think must, arise if from the valuation of the land is to be excluded any value added to it by the occupier. How it will be possible to estimate this I am at a loss to conceive, and the justice of its universal application seems to me more than doubtful. The records of the land courts show the extravagant character of the claims made for improvements; but if we are to go back to an indefinite period, as recommended by some witnesses, or even for thirty-five years, as mentioned in the Report, the field for dispute and litigation, and doubt and difficulty, will be immensely enlarged.

With respect to some land, no one could really tell, except by a guess, what its value ought to be with all these deductions. Whether the improvements are to be calculated at what they cost, or on their results, or on both; whether they have been made by the landlord or by the tenant, are all questions on which difficulties must arise. It seems to me it will be impossible to separate into two distinct classes the value of land arising out of its inherent qualities, and value added to it by works executed thirty or forty years ago, and the effect on particular farms of such general improvements as road-making, main drainage, &c., will be most difficult to determine. Even taking such an ordinary, well-defined improvement as building a tenant's house, a question may arise as to whether the letting value of the farm is increased in proportion to the cost of the house. Then there are other classes of improvements, such as those executed by loans under the Board of Works, where the tenants have paid all the instalments, which will certainly give rise to contention unless their ownership be

clearly defined by law. It has been held by many witnesses that these ought to belong to the tenants—although it was to the landlord the money was lent—although he undertook all the risk, and although, if properly carried out, the land itself, by its improved value, should have more than repaid the annual instalments.

I will not dwell upon the difficulties arising out of payments made to previous occupiers for their tenant-right. These payments have, in some cases, exceeded the full value of the interest of the owner in fee, and they cannot be justly excluded from the calculation of rent; but how far they should be allowed will be a matter of no little difficulty to determine.

We have next to consider at what standard is the fair rent to be calculated. I do not think we should be justified in recommending a general compulsory system of valuation rents unless we were agreed as to the principles on which it should be conducted. It would not be worthy of our position to recommend it in the same loose and general way in which it has been recommended to ourselves. This would be but shifting the difficulty which we ought really to face, and would render our Report on this point almost worthless. There is no paragraph in the Report in which I more thoroughly concur than that which states that a fair rent, as understood in Ireland, means a very different thing from a full, fair, commercial rent, as understood in England. It is well clearly to understand the full force of this admission. The fair rent must be something less—I am bound to express my own opinion—it must be something considerably less than the fair, commercial, full letting value of the land. To impose the adoption of this rent upon every owner would, in most cases, mean, not the deprivation of a mere sentimental right, but the deprivation of very tangible property, the safe enjoyment of which had, in some cases, been lately guaranteed by law. Private rights, I know, must give way to public necessities, but in all cases where clearly recognised rights have been taken away, rights which were given or purchased without any qualification, the withdrawal of the

rights or the valuable property they represented has been accompanied with compensation.

Can it then be said that a landowner in Ireland, who has let his land up to the full and fair commercial value, or who purchased the land when let at that standard, and has since upheld it, has committed any moral wrong, or that his rent is an unjust one? One class of owners of land have, I may say, been almost wholly unrepresented in the evidence given to us, not through any fault of the Commission, for we were ready to hear them if they came forward, but through their own abstention. I refer to the small and new purchasers in the Landed Estates Court. They are not a very popular class, probably not a very deserving class, they may have kept away because they might not have been able to defend all their actions, but they represent, very often, thrifty, hard-working Irishmen, who have, by dint of hard work, laid by a competence which they have invested in land in their own country, and to many of these men such an enactment as lowering their rents to the standard at which an easy-going, affluent, and old proprietor was satisfied to let his land, would mean absolute ruin.

Whether this would be just or unjust, and whether it should consequently be accompanied with or left without compensation, really depends on the question whether a full fair commercial rent is in itself an injustice, and it requires a stronger argument to prove this than a statement of the fact that large and wealthy proprietors have been content to do with less. Again, what would be a fair rent at one time would be unfair at another. Had rents been adjusted four or five years ago, when the times were prosperous and farming profits were high, there can be little doubt such rents could not now be kept up, whilst if they had been adjusted in a time of depression, no matter how low, they could not be raised. The bargain would thus not be an equal one, the very same forces which now exist to control landlords from exercising their full legal rights would control the exercise of any new ones, but it certainly could not be beneficial to the country, and I cannot think it would

be satisfactory to the occupiers to have to look forward to periodical strikes against rent, or demands for abatements in the future as in the past. Such a system is degrading to the tenant, injurious to the landlord, and demoralizing to the country, and, therefore, I believe that wherever the relations of landlord and tenant are to be maintained at valued rents, these rents must be low, and if they are to be variable, some self-acting principle such as is involved in the Longfield lease would be preferable to periodical revisions.

It must not either be too confidently expected that those who are known as good landlords will not take advantage of any rights left to them under the proposed new law. There is scarcely any proprietor who will not find if he takes the rents over all his property and strikes an average that some rents should be raised and others lowered, and if it be the right of individual tenants to claim this average it can scarcely be doubted the landlord in the other instances will claim it also.

One necessary effect of such legislation as is now proposed and of all attempts to regulate by law matters which had heretofore been left to voluntary arrangement must be to make every one assert more vigorously and carefully the rights and privileges which are either left to him or conferred on him.

This has already been one of the effects of the Land Act of 1870, and that the same effect will follow from further legislation we can scarcely doubt. Give the tenant compulsory fixity of tenure at rents valued by law with the right of free sale, and the race of good landlords as well as of bad landlords is gone, and in place of both there will be the statutory landlord until such time as he becomes so obnoxious that every well-wishing man, including himself, will desire his extinction.

These are some of the difficulties which will arise if universal compulsory valuation of rents be determined on, and they are by no means imaginary difficulties. Examples of them all have been brought before us. That they have not been overlooked in framing the recommendations in the Report from which I dissent, I

frankly admit. An endeavour is there made to take the existing state of things as far as possible as a starting point, and the recommendation that rents, which have been regularly paid during ten years out of the last twenty, should be regarded as fair, and should not be subject to immediate revaluation, except under special circumstances, would go a long way in meeting many of the difficulties I have suggested. Remembering that many of the rents objected to before us, were rents arranged more than twenty years ago, I fear that the adoption of this principle will itself give rise to new difficulties and inequalities; but, nevertheless, if the scheme of fixity of tenure, and valuation rents be made general and compulsory, I believe some such principle must be accepted. Indeed, if I believed the tenure itself a satisfactory one, I would not feel bound to urge the difficulties against its adoption as strongly as I have done, and where it is necessary to have recourse to compulsory valuation of rent, I believe the scheme embodied in the Report as good a one as can be suggested.

This brings me to my second objection, namely, that the proposed tenure would not be at all a satisfactory one. It has been suggested to us in a twofold character. It may be a perpetuity at a fixed rent, or a perpetuity at a variable rent. If the former, the landlord is changed into a mere annuitant or rentcharge owner. He will no longer have any interest in or power over his property, his sole connection with it will be to draw out of it a certain fixed payment each year. The nominal owners having no other connection with their property, absenteeism will most certainly increase, and in a very short time this payment to the landlords will be regarded as a huge tax paid by the multitude for the benefit of a few, whose names will, in many instances, be scarcely known to the occupiers of the soil. If, on the other hand, the perpetuity be at a variable rent, and that certain general rights are preserved to the landlord, the property may be of more value to the owner, but it will equally be very precarious in its character. In its origin it may not correspond to a copyhold, but if all the occupiers of

land in Ireland who now hold as tenants from year to year held under this tenure, there can be little doubt that before long they would all combine to have it changed into a copyhold, and if they did so combine, it would be impossible to resist the combination. Perpetuities at variable rents wherever they have been tried have failed to give satisfaction. The Trinity College leases form a notable example of this. There the tenants having fixity of tenure and free sale with variable rents, adjusted according to the prices of agricultural produce, are wholly dissatisfied with their position. The tenure has not led to improvements, and is regarded as so objectionable that a private Bill is about being promoted in Parliament to change the variable rent into a fixed one.

Divided ownership cannot, I think, be a desirable tenure universally to create, although where it is in existence or entered into voluntarily it may not be desirable to interfere with it. That it would be an improvement on the present system and a stimulant to exertion on the part of the occupier, I admit, although it would not be so great a stimulant as actual ownership, but so far as the landlord was concerned it would be a bar to his doing anything for the land. The owner would be deprived under this system of the real position of an owner, whilst the occupier would not have gained that position. The magic influence of ownership would be taken away from both parties, no one would feel that he was owner, and one of the strongest incentives to exertion would be done away with.

What would be the value of the perpetual or variable rent to the owner, is also a matter which has to be considered, and unless it were adjusted at a low standard, I fear it would be almost unsaleable. A perpetuity rent, even of the most secure description, where the rent is low and what is known as the margin of security very considerable, does not now sell, and never has sold, at anything like the same rate of purchase as higher rents accompanied with absolute ownership. A perpetuity rent near the fair letting value of the land would, in reality, be subject to all the variations and fluctuations

of the times, so far as they told against the owner, whilst he would be debarred from any corresponding advantage when they told in his favour, as his hands would be absolutely tied for ever, or during the continuance of the first term of the tenure.

This is not mere theory ; it has been practically developed and proved by what has lately taken place in Ireland. By the free will of the landlords on several estates a practical perpetuity tenure at moderate rents has been established, and yet, to the tenants holding at these moderate rents, abatements have had to be made just as in other cases. If a perpetuity rent of any sort is to be established, I therefore hold that it must be at a very low standard.

In the next place, this system, if universally, or even generally, established, would be but the stand-point for a new and most formidable agitation—this follows almost necessarily from what I have already written. If the tenure would not give satisfaction to the occupiers, it certainly would not have diminished or decreased their strength. If the same relationship as to numbers between owners and occupiers were to exist in the future as they now exist, the struggle for absolute ownership would continue all the same. The variable rent would, most certainly, have to be changed into a perpetuity, which, in its turn, would have to give way to ownership. Having gained so much at a time when comparatively weak, can it be imagined that when strengthened with more than half ownership, they would desist in the efforts to get the whole, or that the whole could be kept from them? What would be left to the landlords, even if the rents were to be variable, would be very little worth fighting for. The first assault would be to turn them into perpetuities, and this being done, their extinction would be but a matter of time.

Lastly, such a system could not possibly be kept up with regard to future lettings without legal restrictions and interference which would be mischievous to all parties concerned, useless for the purposes for which they were created, and, in the end, intolerable to every one.

Whether just or unjust, it would be quite possible at once to make all the occupiers of farms in Ireland hold by a fixed tenure, and at a rent arranged by valuation, but, to extend this to future lettings, would be quite a different thing. If a man has now a holding of land in his own possession, and if he be free to hold it or to let it, it will be found in practice impossible to prevent his getting its full market value when he lets it. Just as the landlords in the north of Ireland who have tried to limit the price of the tenant-right have failed to do so, money being paid outside the office in excess of that given in presence of the agent or landlord, so would the law fail which attempted to fix the price to be paid for the hire or use of the land. Just as the usury laws failed, so would this law fail, and, instead of benefiting the persons intended to be benefited, the result would be the reverse. Applied to future lettings the establishment of these restrictions would be a step backward instead of forward—instead of freeing the transfer of land from difficulties, they would create new ones, and the system could not possibly last.

Even still more objectionable would be the proposal of fixity or perpetuity of tenure as applied to new lettings. I cannot justify the principle that a man should either keep land in his own possession or part with its occupation for ever. This, in practice, would be found intolerable. In the words of Judge Longfield, the public would not long bear a law which prevented two men from making a bargain, just in itself, useful to the public, and profitable to both parties. A holds a farm which he wishes to let for a short period; for this purpose he is willing to let it at a lower rent than if he let it for ever. B just wants such a farm, and it suits him better than paying a higher rent or a large fine for a longer tenure. Will it be tolerated that the law should step in and say this cannot be permitted, and either A must continue to work his farm in person at a loss, or give it up for ever, and B must do without its temporary use, or pay a heavy fine which he is unable to raise. The scheme of fixity of tenure and valued rents must be applied only to existing

tenancies. Its application to them may be necessary and justifiable, but with this its existence must cease, and once it has established a large number of the occupiers in secure occupation of their farms it must give place again to freedom of contract.

For these reasons I have felt obliged to dissent from some of the most important recommendations in the Report. They seem to me to fail in having any lasting basis to stand upon; but mere dissent from them does not solve the problem. The difficulty we have really to face is this: we want to confer on the tenants of Ireland valuable rights which they do not now possess—rights possessing a considerable intrinsic and money value, which the occupiers are not able fully or immediately to buy, and which cannot be justly taken from the existing owners without some option or compensation. Is it possible to reconcile these two interests without injustice? It seems to me to be so, but not without the interference of the State, and the very considerable interference of the State, in the way of advancing money. I believe that with a combined system of voluntary arrangement between landlord and tenant for fixity of tenure, at either perpetuity rents or variable rents and compulsory sales, the problem can be met.

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Perpetuity of tenure at low rents, rents considerably under the full letting value, may be sufficient in a number of cases to meet the wants of the country, and where the landlord was willing to grant these, he should be encouraged to do so; first, by advances to the tenant to enable the tenant at once to purchase it; secondly, if the tenant did not purchase at once, by entitling the landlord to receive payment for it on the occasion of the first sale of the tenant's interest; thirdly, by securing the landlord in all pre-existing arrears, and by giving very quick, sharp, and decisive remedies for the recovery of rent, or the possession of the land where the rent was not paid.

But this, after all, I would consider but a very small portion of the scheme that would be required. Absolute

ownership is what must be looked to as the essential element of any really effective proposal, and I do not think that in order to bring this about it would be necessary to have universal or even general compulsory expropriation of landlords. If landlords were given merely the alternative of granting the perpetuities proposed in the Report, or submitting their estates for sale, I believe it would be found there would be ample field for creating occupying ownership. To every tenant of an agricultural holding, with certain exceptions to which I shall refer hereafter, I would give the right to demand the fixity of tenure and fair rents suggested in the Report, and if the landlord refused to grant it, I would compel him to sell to the State. The State having purchased, should then, if possible, sell outright to the occupier and establish absolute ownership at once, or should create a tenancy convertible into absolute ownership at the earliest possible date. I believe this could be done without any loss to the State, without the assumption of any undue responsibility, and without sacrificing those private rights, which, without some such system, will and must be sacrificed.

Except in this indirect way, I do not propose any compulsory sales. Compulsory sales in certain cases have been advocated by some of those who have appeared before us, but it strikes me it is not so much compulsory sales as compulsory purchasers that would be required. No one, I presume, would say it would be just to compel any proprietor, whether individual or corporation, to sell, unless he or they were secured in the full value of their property.

In every proposal that has been mooted in regard to compulsory sale, it is always presumed that the State, which for the good of the public, compels sale, will step in and purchase on behalf of the public, and that the seller will get the full value of the property. If this be secured to the seller I do not see any unwarrantable interference with his right in compelling him to sell, especially if this be accompanied with the alternative of granting to his tenants that security of tenure, which, looking to the general good of the country, seems to be

required. Certainly an owner with this option presented to him is not at least in a worse position than if he were compelled without an option to give the tenure above referred to, and therefore, so far as the owner is concerned, he would have far less reason to complain of unjust interference with his rights than if he had forced on him, without any alternative, the granting of the perpetuities.

There is, no doubt, involved in this a very much larger question than the rights or interests of the owner, and that is the responsibility of the State; and the question arises, whether if all the owners of land in Ireland were willing to sell their estates at their fair value, the State ought to become even the intermediary purchaser, and buy them up with the view of selling them to the occupiers, or making these occupiers tenants on tenures that would be more conducive to the good of the public at large. There is also involved in this the ascertainment of what would be the real fair selling value of the property; and it may be urged it would be as difficult to ascertain the fair selling value as the fair letting value, that the one hangs upon the other, and that all the difficulties I have enumerated, in regard to settling the fair rent, would have to be encountered in settling the fair selling value.

With regard to the first question—the responsibility of the State—I think it is to be regarded in two aspects. First, Is it a just responsibility? is it one that the State ought justly to undertake? Secondly, Is it likely to be of an overwhelming character? With regard to the first point it seems to me to be a most just responsibility. The position of affairs is this:—Under the existing law certain persons, called landlords, have the ownership of the land of the country guaranteed to them. They have certain rights in that land, as owners, which it is considered expedient for the public good to do away with; and if the deprivation of these rights depreciates the value of their property, it is in accordance with all the practice of British legislation to give compensation to the persons deprived of these legal rights, or to

take up from them their property at its pre-existing value.

If the granting of the new tenure would not depreciate the value of the landlord's property, there could be no great risk involved in taking it off his hands, granting the perpetuity, and then re-selling to the outside public. Until the last year or eighteen months there was no lack of purchasers for Irish landed property when put up for sale; and if the new tenure gave satisfaction, and that it did not materially depreciate the value of the owner's property, there would be no great responsibility or loss involved in buying up all the property offered for sale under such circumstances. In any case, it seems to me that the change in the position of landlord and tenant being effected for the public good, and not for the good of the individual owner, any loss, should loss arise, should be borne by the public; and that therefore the responsibility is one that might justly be accepted by the State.

It has been suggested that this responsibility would be of enormous magnitude. I cannot join in this apprehension. I do not believe that all or the great majority of the landlords of Ireland, sooner than grant fixity of tenure at valued rents, would rush in and demand that their estates should be purchased. But if there were grounds for this apprehension, nothing could more clearly show the adverse opinion entertained by these owners as to the effect which the new compulsory tenure would have on their relations with their tenants. It must also be remembered that the utmost responsibility accepted by the State, even in such a case, would be an obligation to grant this very same tenure to the occupiers; and if the tenure did not depreciate the value of the property there surely could not be much risk in the transaction, as the State, having granted the perpetuity, could at once re-sell to the highest bidder.

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The experiment, so far as it has been tried in Ireland, has, I think, been a great success. Evidence was given to us, showing that the vast majority of the owners

created under the Church Act and the Land Act have been prospering, and are contented ; and the year which we have lately passed is one which must have severely tried the system. On all sides tenants, holding at the most moderate rents, were receiving abatements, arrears were growing apace, and rent-paying in many cases had altogether ceased ; yet no abatements were made to these purchasers, and the remarkable fact remains, that out of a rental, largely paid by very small occupiers, only ten per cent. of arrears appeared to be due to the Church Commissioners at the end of the year 1879, and the whole of this they expected to recover. In some individual cases the purchasers have failed, some have sold their purchases, others are in debt, and will have to sell. This was to have been expected ; but these cases are the rare exceptions, and that they should be so few after such trying times, and that those few should leave their holdings quietly when they found themselves unable to retain them, are the strongest arguments in favour of the system.

I consider the option of sale, or offer to purchase on the part of the State, the most important portion of my proposal, and by itself I think it would accomplish much of what is wanted. Quite apart from the disadvantages arising out of insecurity of tenure on the part of the occupiers, I believe the disadvantages of having the ownership of land held by a mere handful of the population are in themselves most serious. Security of tenure has long been the demand of the occupiers ; it will soon be the turn of the owners to cry out for the security of their tenure, and their security will be most unsafe unless it be largely participated in by the mass of the population which now really governs the country.

In undertaking such a purchase, the State must of course be secured against having to pay more than the real value of the land, and one of the first conditions ought to be that the purchase-money should not be of a character to tempt the owner to part with his property mainly with the view of getting a fancy price for it. In arriving at the value of an estate offered for sale it would

not be fair to proceed altogether on the basis of the existing rental, and, therefore, it would be necessary in some cases to have a valuation of the land irrespective of that rental, and here we may have to meet with the same difficulty as would arise in valuing for a fair rent. The difficulty is undoubtedly of the same nature, but not at all to the same extent. The valuation of a rent for the purpose of purchase will be found much more easy than a calculation of rent for the purpose of an annual payment. One of the greatest difficulties in arriving at a fair rent as between landlord and tenant, on a uniform scale all over Ireland, will be that such uniform scale would necessarily result in many raisings of rents. This difficulty certainly will not exist to the same extent, and it may not exist at all in regard to lands purchased by the State, and that because the State can afford to take much lower rents than anyone else, and to do this without any loss. The difference in the rate of interest at which the State can raise loans and that required by any private individual being the explanation.

This may be illustrated by an example: Let us take the cases of two holdings on different estates of really the same value—the one let at £90 a year, the other at £110—the true letting or fair rent of each let us suppose to be £100 a year. If perpetuity of tenure at fair rents were to be established, the one tenant's rent would have to be raised £10 a year, whilst the other would be lowered £10, and even if this gave satisfaction to the one man the other would be certain to be dissatisfied; but if instead of this the State were to purchase the two holdings at $22\frac{1}{2}$ years' purchase of the fair rent, and to charge interest say at four per cent., there would not be the same dissatisfaction. Each holding would cost £2,250, and four per cent. on this would equal £90, so that the one tenant would have his holding for the future at the same low rent as before, and the other would have a very considerable reduction—from £110 to £90.

* * * * *

What I therefore suggest is, that a commission should be appointed, with ample funds guaranteed by the State,

to purchase up, at a fair selling value, all the estates offered for sale by the existing owners; that, having purchased these lands, they should be resold to the occupiers wherever the occupiers could pay down in cash one-fifth of the purchase-money, four-fifths being advanced at annual payments, such as would extinguish the principal and interest in a given number of years, which I would suggest to be thirty-five.

Where the occupiers are not able to provide one-fifth of the purchase-money, they should either have perpetuity grants made to them of the lands at a fair rent, and these perpetuities should be sold to the public, or the perpetuity grants should be made to them at an annual payment which would repay four-fifths of the purchase-money, interest and principal, in thirty-five years; that this should be paid to the Commission simply as interest or rent, until such time as the first sale of the tenants' interest took place, when, out of the purchase-money, realized by such sale, the original one-fifth should be paid to the Commission, and that from that date the repayment of principal should commence. I propose this mode of repayment because I believe that although many occupiers could not now, or at once, advance any portion of the purchase-money; yet, on the first sale of their interest in the land, ample funds would be forthcoming. In proof of this I refer to the enormous sums now paid for the tenants' interest in Ulster.* Under this proposal, taking the example I have already given, if a holding worth £100 a year were purchased for £2,250, and the tenant was not able to pay one-fifth of the purchase-money, or £450, his annual payment should be fixed at five per cent. on £1,800, or £90, which should be regarded simply as interest or rent, until such time as the £450 was paid to the Commission, after

* Inasmuch as five per cent. on four-fifths of the purchase-money would be the same as four per cent. on the whole, I have taken this example to show, that so long as the occupier had made no repayment on account of the purchase-money, the State would be in receipt of four per cent. interest on the whole money advanced, and as soon as the one-fifth was repaid, the very same annual payment would wipe off principal and interest in thirty-five years.

which time the repayment of principal should commence, the payment of the £450, if not previously made, being obligatory on the first sale of the occupier's interest.

The probable immediate results I would anticipate for this scheme are the following:—First, that a very large quantity of land would be at once brought into the market, and rendered available for peasant proprietary. Secondly, that the land so brought into the market would to a great extent be the property which it would be most desirable to take from its present owners. Thirdly, that these operations would not be confined to any particular district or portion of Ireland, but would be general, and make its influence felt everywhere. And lastly, that the absolute ownership thus conferred on such a large number of proprietors would have such a general wholesome effect, that even the relations between the occupiers and owners where sales did not take place would be greatly benefited. That a large quantity of land would at once come into the market for sale, and that on very reasonable terms, cannot, I think, be doubted. But if, by any chance, this turned out not to be the case, I would be quite prepared to go further and compel sales. Where a property was incumbered to a certain proportion of its absolute value, I would compel its sale, and then the requisite amount of land for peasant proprietary could be easily got, but before having resort to this compulsion, the offer of general purchase should be first tried, and I cannot doubt it would be found quite sufficient.

In the next place the estates that would be offered for sale would be just those which it would be most desirable to have sold. Most probably if the alternative of granting perpetuities at fixed or variable rents to the tenants, or of selling to the State, were offered to all proprietors, the old established residential owners, between whom and their tenants, feelings of good-will had always existed, and who had always asked for only low rents and permitted practically fixity of tenure to exist, would come to an arrangement voluntarily with their tenants, and would grant legally what they had

previously been in the habit of allowing. Neither landlords nor tenants in such cases would like to part company. Some general rights of ownership, such as rights of shooting, rights over bogs, quarries and minerals, could be reserved to the owner, which would give him an incentive to retain his land even on the altered conditions. Lowness of rent and fixity of tenure being secured to the tenant, he, too, would be satisfied to remain in his present position.

The case would be different with the new purchasers ; the men known as the rackrenters. Those who had no interest in the possession of the land, beyond that of getting the most they could out of it. They would be almost certain to sell even if they had to sell at a loss compared with the prices which they themselves had paid. The first loss to them would be better than a perpetual loss in getting only a low rate of interest for their money, and having all the expenses and perplexities of collecting an unwillingly paid rent. Again, where estates were heavily incumbered, most probably an amount sufficient to pay off the incumbrances would be sold, and one of the greatest disadvantages of the present system, where land is nominally owned by one man, and is in reality the property of another, would be done away with. Outlying townlands, distant from the residence of the owner, and the estates of absentee proprietors who took no interest in their property, would probably be amongst the first to be sold.

This would also take place all over Ireland ; it would not be confined to any particular district or county, and everywhere throughout the length and breadth of the land, occupying owners would be established, influenced by every feeling that actuates the human breast to maintain and to uphold the rights of property, a state of things which could not but affect even the relations between landlord and tenant where these relations still continued.

Of course in opposition to this the financial difficulties of carrying it out have to be considered. For the State all at once to become as it were the landlord of

the majority of the tenants in Ireland would be a most serious responsibility, and if the occupiers were to refuse to pay the Government, a very serious state of affairs might arise.

This is really not to be apprehended, and it could be met effectually, if apprehended, by placing a limit on the price beyond which the State would not go in purchasing property. Assuming, however, as we are bound to assume, that a very large amount of property would be sold, where is the money to come from, and how is the repayment of interest and principal to be secured? I believe a great deal of the money could be found in Ireland itself. A large amount of money is now lodged on deposit at very low interest at the banks, and if land debentures were created, guaranteed by the Government, and bearing interest say at three and a-half per cent., and issued for very small sums, I believe they would be largely taken up through the country.

In order to secure this it might also be provided that the landowners selling their property should take a considerable portion of the purchase-money in these debentures. What is wanted is not so much a large amount of money as the guarantee of the State, and if this were once given there would be little difficulty in finding capital.

The next question which arises is, Whether this could be safely given? If it were necessary that the Government should directly stand in the position of landlord to a vast number of occupiers, I think the objection would be a serious one, but here again I think local machinery might be introduced. The example of other countries might be imitated in this respect. In the evidence given to us by Lord Dufferin, the course pursued by Russia under somewhat similar circumstances was quoted to us, and by making some such local unit as the poor law union responsible for the payment of the annual instalment, I think this difficulty could be got rid of.

The course which should have to be provided would be to transfer to the union authorities the duties of

collecting the annual payment from the occupiers, and in default of payment by any individual occupier, to make the rateable property within the poor law union responsible, giving of course to the authorities the most summary powers of seizing and selling the interest of any defaulter.

The result of this proceeding would be to make every occupier of land within the district, and every man who had paid his own instalment, interested in having the payments punctually made; and, instead of public sympathy running in favour of the defaulter, it would run in exactly the opposite direction. Moreover, every man who had invested his capital in any of the debentures, would also have a stake in the country, and become little desirous to see any revolutionary changes.

When once these perpetuity holders or occupying owners are established, other difficulties will still have to be met. Every one interested in the well-being of Ireland must desire that some check should be placed on subdivision or subletting. Excessive subdivision of land has been in many instances one of the greatest curses of the country; yet it will be extremely difficult to prevent it unless the habits of the people change, and that greater intelligence and foresight is produced by the new position in which they will find themselves. Subletting might possibly be prevented during the time that any instalment of purchase money was due to the State, and both it and subdivision should be strictly prohibited.

Theoretically, I am opposed to any unnecessary interference with the rights of the new owners, in disposing of their property, and practically I fear it will be next to impossible to prevent subdivision so long as the people themselves look to it as a means of providing for their families, and to a change in their habits and views we must look, in the long run, for a remedy.

One of the curious anomalies of the present state of affairs is, that whilst the Land Act places penalties upon subdivision and subletting, the common law of the country seems to encourage subdivision. The Land Act makes subdivision penal, and yet it has created a property,

which, by the common law of the country, is divisible, in case of intestacy, amongst all the children of a deceased tenant. When a tenant dies intestate, if the land be not divided amongst all the family, it must be sold, and the profits of the sale divided amongst them, so that either division of the land, which is subject to penalties, or sale of the holding, to which the tenant has no right, should legally be resorted to in many cases. The difficulties arising out of this have been adverted to by many witnesses, and these difficulties will exist with regard both to perpetuities and ownerships, unless by law one person is made to inherit the whole.

This brings prominently forward a fact which is well worth noting, and that is—that with a perpetuity tenure and free sale, and a prohibition against subdivision, the land of the country, unless the law of primogeniture prevents it, will in a very short time be held at its full market competitive value. Landlordism, with its full rights, is the only system under which, in the long run, land, without subdivision, can be held by the occupiers at a less rate than its full competitive value. With free sale replacing the landlord's control, on the death of every occupier, where no will is made, either the holding must be subdivided, or it must be put for sale, or one of the family may get it, paying to the other members of the family its full market value.

As a check against subdivision it has been proposed that power should be left to the landlord to prevent it, either by ejecting the tenant or compelling a sale. It is worthy of notice, I think, that this very provision may have the opposite effect to that which is intended. It is intended as a check against subdivision, yet it gives to the landlord what may turn out to be an inducement to permit it. To him is still left the privilege of prohibiting subdivision on the part of the tenant, but this is a privilege which of course could be waived, in consideration of a money payment, and it may turn out that it will be the only real means left to a landlord of getting an increased payment for his land under a perpetuity at either variable or fixed rent. There can be little doubt

that in many cases the tenant, anxious to subdivide, would be willing to make a payment for it; and, under the nominal prohibition, there is, therefore, so far as a landlord is concerned, a sort of premium on subdivision.

Subdivision or subletting, where the State either directly or indirectly stands in the position of the landlords, will, I admit, be very difficult to prevent. It would probably be most effectively prevented by giving a legal right to the sub-tenant or persons with whom the land is divided, to claim the whole holding, but whether such a severe remedy as this would be thought just or expedient, I do not undertake to determine.

If any of the proposals which I have recommended be adopted, it is scarcely necessary to add that very enlarged powers of sale must be given to limited owners, that the interests of remaindermen and mortgagees will have to be carefully looked after, and that all the proposed proceedings will have to be carried out through a Court specially provided for the purpose. Even the establishment of these occupying owners will not be nearly sufficient if the laws relating to the charging and transfer of land remain as complicated and expensive as they are, and no reform of the Land Question in Ireland can be complete without a very great simplification of the law relating to land transfer. This in itself is such a large question, and it has occupied the attention of so many special commissions, that it would be impossible to deal with it properly here, although it is by no means one of the least important questions which have to be dealt with.

To recapitulate, then. The scheme which seems to be most likely to meet the present wants of the country is one—first, securing occupying owners on a large scale throughout every part of the country; secondly, securing a certain class of tenants fixity of tenure at low rents, with the right of free sale; thirdly, simplifying as far as possible the dealings in connexion with the transfer of land.

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The case of leaseholders is far more difficult to deal with, and here I cannot concur with my colleagues. On the one side it would seem unreasonable that a man who had entered into a specific contract to surrender the land at a given time, and who, in consideration of that contract, had received the land and had perhaps held it on most favourable terms, should have the right to demand that the terminable tenure should be changed into a perpetuity, and that whilst he had secured to himself and enjoyed all the benefits of the contract in lowness of rent, he should now get rid of the consideration on account of which he received these benefits. On the other side it may appear equally unreasonable that the man who has no tenure at all beyond that limited by twelve months' notice to quit, should have perpetuity secured to him, whilst the owner of far larger interest in the land should be deprived of this.

This shows one of the great difficulties which seems to me inherent in trying to settle the question on the basis of compulsory fixity of tenure. I acknowledge myself wholly unable satisfactorily to get over this difficulty. It seems to me that the one condition of the lease, that the lands should be surrendered at the end of a certain term, is, or ought to be, just as binding as the other condition, that no more rent shall be asked for it than the tenant has contracted to pay, and I would be unable to defend the proposition that a tenant who perhaps held the land under lease for the last forty years at a rent extremely below the equitable price of the day, should have a right, whilst having enjoyed the advantages of one part of the contract, to get rid of the other, and to demand that the terminable interest should be converted into a perpetuity.

The principle which I prefer to compulsory fixity of tenure would here come in to help us, and get us out of the difficulty. The owner's interest in a terminable lease is something which could be accurately valued, and if a sale of the owner's interest took place, and the sum paid were the full value of such interest, he would have no ground of complaint. In such cases the leaseholder should

have no claim for perpetuity of tenure, unless he were himself willing to purchase the fee.

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I have now dealt with the general question of land tenure in Ireland, and with the remedies which I think necessary in order to put things into proper condition ; but something still remains. There are parts of Ireland in which the condition of things is such that no alteration in the tenure of land or the amount of rent could really accomplish any lasting effect. There are portions of Ireland in which the land is so bad, and is so thickly populated, that the question of tenure and rent are mere trifles. If the present occupiers had the land for ever, and for nothing, they could not in the best of years live decently, and in bad years they must be in a state of starvation. Here we have a totally different problem to meet from that which prevails elsewhere. From these districts there must be either emigration or migration. A very large proportion of the population must go to foreign and more fertile countries, or they must be removed to other portions of this island.

One alternative to meet this over population on the bad land is reclamation of land on a large scale. I wish I could believe in the success of this, but I feel bound to say I do not. That there is much reclaimable waste land in Ireland I quite believe ; that most of what is called reclaimable land could be reclaimed I admit ; but the real question is : could it be reclaimed at a profit, and on a large scale ? What is far more wanted than reclamation of waste land is the proper cultivation of land already under cultivation ; and it would be far more profitable to undertake to put the land now under cultivation into a proper state than to commence operations on what is commonly called waste land. If tenants have waste land attached to their holdings, and are able, year by year, to reclaim little patches, and let them into their holdings, that I believe to be effective and profitable ; but I do not believe that if the Government were to take up large tracts of waste lands in Galway, or Mayo, or Clare, or Kerry, and plant down upon them some of the

surplus population of these counties, that they would succeed. I am not a believer in Government work being done more economically or better than work done by private individuals or companies, and I have come to the conclusion at which I have arrived in regard to waste land from experience of previous efforts in this direction. We have had brought before us several cases of large reclamation schemes, and none of them appear to have been crowned with success. At the same time I sympathise very much with the desire of those who see in the reclamation of waste lands a means of keeping our people in their own country; and as I may be wrong in the gloomy views I take of the proposal, I will be very glad to see the experiment tried, and I quite concur in saying that I believe even its partial adoption would gratify a large body of public opinion in Ireland.

Voluntary emigration is the only other remedy which has been suggested to us, but the sort of voluntary emigration that has of late years been going on is not what a well-wisher of the country would like to see. The strong, and active, and intelligent youth of the country have been leaving, and if State-aided emigration be thought of at all, it should be conducted on a system under which whole families should be taken out, and preparations made beforehand to receive them. •

That some remedy is wanted to prevent the recurrence of periodical distress in certain parts of Ireland I very strongly feel. We have had abundant evidence to show that the rents in these localities have had really little or nothing to do with the destitution. Evidence on the subject is scarcely necessary. The simple fact that the rents in many localities average £3 and £4 a-year, and that the lowest annual amount which an average family would require to support themselves is £60 or £70, must be convincing proof that the doubling of the rent or its total abolition could not make the difference between even moderate prosperity and destitution. The loss of a small pig or of one rood of potatoes would be a greater loss to one of these tenants than even the doubling of his rent, whilst the production and good sale of one

firkin of butter would be worth more to many of them than the forgiveness of a whole year's rent.

These men, in the majority of cases, are not really tenant farmers at all; they are labourers who give the greater part of their labour in England or other parts of the country, and who have merely residences and patches of poor land in some of the western counties. In good years, when the potato crop succeeds and wages are high, they get on fairly well, but in bad seasons they are in utter destitution, and except by taking them out of their present wretched holdings, in some way or another, there does not seem to me much chance of their improving their condition.

In the conclusion of the Report I most cordially join, and although I may differ in some points as to what the Irish occupier most wants, no one is more desirous than I am that he should receive everything to which he is justly entitled, and no one is more decidedly of the opinion expressed in the Report, that unless the expected new Land Bill is a full and exhaustive one, going to the root of the whole matter, and settling it permanently, it would be better not to interfere with it at all.

O'CONOR DON.

10th January, 1881.

BOSTON COLLEGE



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